IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 30891 of 2007(C)

PETITIONER:

M/S. JOHNSON ROCKS,
PAYYANAMON, KONNI, REPRESENTED BY ITS
MANAGING PARTNER, MRS. SUSAMMA JOHN.

BY ADV. SRI.THAMPAN THOMAS
SRI.JACOB CHACKO
SMT.V.O.PHILOMINA
SMT.K.S.SABITHA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, TAXES, TRIVANDRUM.

2. THE DEPUTY COMMISSIONER,
APPEALS COMMERCIAL TAXES, KOLLAM-1.

3. COMMERCIAL TAX OFFICER-1,
PATHANAMTHITTA-1.

4. THE TAHSILDAR,
REVENUE RECOVERY, PATHANAMTHITTA.

BY GOVT. PLEADER MR. K.P. PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30891 OF 2007 C
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Dated this the 18th October, 2007

J U D G M E N T

Against Exts. P5 and P6 orders of assessment for the years 2001-02 and 2002-03 petitioner filed appeals as is evident from Exts. P7 and P8. Considering the application made by the petitioner for stay of recovery of tax due in terms of the orders of assessment, the appellate authority has passed Ext. P9 order granting stay on condition that the petitioner remits 50% of the tax. This order has not been complied with and that resulted in Ext. P10 revenue recovery notice, by which, the entire dues in terms of the orders of assessment are sought to be recovered. It is challenging the revenue recovery proceedings as also the conditional order of stay which has been granted by the appellate authority that this writ petition has been filed.

2. In so far as Ext. P9 conditional interim order of stay passed by the appellate authority is concerned, the petitioner has not complied with the same. Since the petitioner has not complied with the conditions

imposed by the appellate authority in Ext. P9, and since stay obtained from the appellate authority stands vacated, the respondents cannot be faulted for the steps they have taken by Ext. P10 revenue recovery notice.

3. As far as the condition imposed for requiring the petitioner to remit 50% of the tax due as per Ext. P9 is concerned, the contention raised by the learned counsel for the petitioner is that the quantification of tax is based only on the details of the energy charges collected by the Electricity Board and that this has been done despite the labour unrest and consequential suspension of work, that was prevailing in the unit.

4. These aspects have already been dealt with in Exts. P5 and P6 assessment orders. In any case this is a matter to be gone into by the appellate authority. Having gone through the order Ext. P9, I am not in a position to find any perversity in the order passed by the appellate authority.

5. Therefore, I am not in a position to interfere with Ext. P10. However, as a last chance I direct

that if the petitioner remits the amount ordered in Ext. P9 within one month from today the petitioner will be entitled to the benefit of stay and that in the meanwhile the Revenue Recovery proceedings will be kept in abeyance.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-